

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-0576V

UNPUBLISHED

JOHN McFARLAND,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 26, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Jonathan Svitak, Shannon Law Group, Woodbridge, IL, for Petitioner.*

*Kyle Edward Pozza, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On May 8, 2020, John McFarland filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (SIRVA) as a result of an influenza (“flu”) vaccine received on October 2, 2018. Petition at ¶¶ 2, 9. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 24, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a left SIRVA. ECF 22. On October 26, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$60,798.50. Proffer at 1.

<sup>1</sup> Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

This consists of an award of **\$60,000.00** for actual pain and suffering and an award for **\$798.50** for past unreimbursed expenses. *Id.*

In the Proffer, Respondent further represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$60,798.50 in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

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JOHN MCFARLAND,	)	No. 20-576V
	)	Chief Special Master Brian H. Corcoran
Petitioner,	)	
	)	
v.	)	
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

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**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

On August 24, 2021, respondent filed a Vaccine Rule 4(c) report conceding that entitlement to compensation was appropriate under the terms of the Vaccine Act. ECF No. 21. The same day, Chief Special Master Corcoran issued a Ruling on Entitlement, finding that petitioner received an influenza (“flu”) vaccination on October 2, 2018, and was entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, and related sequela. ECF No. 22.

**I. Amount of Compensation**

Respondent now proffers that, based on the Chief Special Master’s entitlement ruling and the evidence of record, petitioner should be awarded a lump sum of \$60,798.50, consisting of the following: \$60,000.00 for actual pain and suffering, and \$798.50 for past unreimbursed expenses. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

## II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made as described below, and request that the Chief Special Master's damages decision and the Court's judgment award the following:<sup>1</sup>

### A. Petitioner's Damages

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of **\$60,798.50**, in the form of a check payable to petitioner.

Petitioner agrees.

### B. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Acting Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Deputy Director  
Torts Branch, Civil Division

ALEXIS B. BABCOCK  
Assistant Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

/s/ Kyle E. Pozza  
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